IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3568 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARRY ENGINEERING & ELECTRONICLTD

Versus

MUKESH JETHABHAI VOHRA

Appearance:

1. Special Civil Application No. 3568 of 2001

MR DIPAK R DAVE for Petitioner No. 1

MR RAJESH P MANKAD for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 13/03/2002

ORAL JUDGEMENT

Rule. Learned Counsel for the respondent waives service of rule.

2. By this petition styled as a petition under Article 226 and 227 of the Constitution of India, the petitioner, in fact, challenges the award of the Labour Court, Ahmedabad in Reference (LCA) No. 490/92, whereunder the respondent is ordered to be reinstated with full backwages and costs.

3. The respondent had raised the dispute and after reference of the same, the Labour Court has recorded evidence. After appreciation of the evidence, it was found that the respondent workman, after continuous service for two years, was discharged from service from 18.9.1991 by an oral order. The necessary procedure for retrenchment or for dismissal on the ground of alleged continued absence having not been complied with, the respondent was found to be entitled to reinstatement.

4. Learned Counsel Mr. Dave vehemently argued that the respondent had approached the Labour Court with unclean hands, in so far as the fact of his alternative employment after the termination was not disclosed before the Labour Court and an attempt was made to introduce evidence at this stage by filing an affidavit of an officer of an investigating agency. Learned Counsel also emphasised the fact that at the time of filing of the written statement before the Labour Court itself the petitioner had expressed in writing its willingness to allow the respondent to resume his duty.

5. Learned Counsel for the respondent failed to show any evidence of the respondent having ever attempted to resume duty after the offer being made in the written statement of the petitioner. Therefore, even in absence of any evidence being led at the appropriate stage as regards the alternative employment of the respondent, the petitioner could not be faulted for the alleged unemployment of the respondent after the offer of reinstatement being made. A written statement was filed after two years of the date of oral termination. Therefore, it would appear just and fair that the respondent should be entitled to backwages for the period of two years only and the award is required to be modified to the extent it orders payment of backwages for the entire period of the pendency of the dispute. In these facts and circumstances, the petition is partly allowed and the impugned order is modified to the extent that the respondent shall be entitled to reinstatement with full backwages for the initial period of two years from the date of his termination. In view of the prolonged pendency of the dispute for more than a decade, the petitioner is directed to make the payment of

backwages within a period of one month from today. A statement is made on behalf of the respondent that he will report for duty by the next week. Rule is made absolute to the aforesaid extent.

(D.H. Waghela, J.)

*/Mohandas